FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Rev Appln no.28 of 2006

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directions and Registrar's Order	Court or Judge's Order

Mr S R Mishra for applicant
Mr Harish Pawar for Respdt no.l
Ms Geeta Joglekar for BMC

CORAM; A.M.KHANWILKAR J.

DATED 6.3.2006

P.C.

. Heard parties. Rule. Mr Pawar waives service on behalf of respondent no.land Mrs Joglekar waives service for BMC. As short question is involved in this application,same is heard forthwith by consent.

. By the impugned order the trial court has rejected the notice of motion taken out by the applicant for recalling the order dated 2l.l.2006 of no written statement and permitting

the applicant to file the written statement which was affirmed on l6.4.2005 to be taken on record. In deed the court below has adverted to the roznama and has recorded that the applicant was served with the summons on 23.3.2004. The applicant remained continuously absent from l4th Nov 2005. Issues came to be framed on 23.3.2005 on which date no written statement order also came to be passed. According to the trial court the delay in taking out the notice of motion was not satisfactorily explained by th applicant so as to show indulgence of permitting the applicant to place on record the written statement.

. From the pleadings as filed before the lower court it is established that the applicant had affirmed the written statement on l6.4.2005, copy of which was served on the Corporation on 20.4.2005 and on plaintiff’s advocate on 26.4.2005. This fact is not disputed. It is obvious that the applicant had instructed the advocate

who in turn failed to take necessary steps to comply with the procedure before the trial court. It is well settled that for the mistake of the advocate the litigant should not suffer. The applicant has stated on affidavit that after service of writ of summons the defendant no. 3 i.e. father of the defendant no. 2 was unwell and was hospitalised. In substance the stand taken on behalf of the applicant before the trial court was that on account of family difficulty the matter could not be pursued by the applicant. It was not a case of wilful or intentional delay but a bonafide mistake. It is also a matter of record that the applicant prosecuted the notice of motion taken out in the said suit which has been finally decided against the plaintiff. The applicant had filed detailed reply in the said proceedings. Taking over all view of the matter in the interest of justice this is a case where the trial court ought to have shown indulgence to the applicant by

imposing appropriate cost so as to compensate the respondent- plaintiff. In the circumstances this revision ought to succeed. The impugned judgment and order is set aside. Instead, the notice of motion taken out by the applicant being notice of motion no.4365 of 2005 in L C.Suit No.4062 of 2003 is made absolute in terms of prayer clauses (a) and (b) thereof on condition that the applicant shall pay cost quantified at Rs.l0,000/- to the respondent no.l. The amount of cost shall be paid within two weeks from today and receipt of payment be produced before the trial court, whereafter the subject written statement will be taken on record.

. At this stage the counsel for the respondent -plaintiff submits that the plaintiff is suffering great hardship for which reason the suit will have to be disposed expeditiously. There can be no difficulty in acceding to this request. The trial court may proceed with the suit expeditiously after

pleadings are complete and finally dispose of the same preferably by the end of March 2007. Ordered accordingly.